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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,474	01/23/2002	James L. Tracy	CM02045K	6374

7590

03/29/2006

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/055,474	<b>Applicant(s)</b> TRACY ET AL.	
	<b>Examiner</b> Jeff Piziali	<b>Art Unit</b> 2629	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**


The Appeal Brief filed on 23 January 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
J.P.

23 March 2006

3/23/06

Continuation of 10. Other (including any explanation in support of the above items):

Page 4 of the appeal brief incorrectly identifies the application's filing date as "January 23, 2006." The instant application was actually filed January 23, 2002.

Page 5 of the appeal brief incorrectly identifies the 'Related Proceedings Appendix' as being located in Section "IX." The 'Related Proceedings Appendix' is actually located in Section X of the brief.

The 'Status of Claims' section on page 6 of the appeal brief incorrectly identifies the final Office Action as being dated "June 7, 2005." The final Office Action was actually mailed 22 August 2005.

The 'Status of Claims' section on page 6 of the appeal brief incorrectly identifies claim 6 as being rejected under 35 USC 112. Independent claim 16 was actually rejected under 35 USC 112. Moreover, the brief omits any statement that claims 9-15 and 18-22 were rejected under 35 USC 112, due to their respective claim dependencies.

The 'Status of Amendments' section on pages 6-7 of the appeal brief improperly lists the status of various amendments and even an RCE, all filed prior to the final rejection mailed 22 August 2005. The 'Status of Amendments' section should only contain a statement of the status of any amendment(s) filed subsequent to the final rejection. Currently, no such statement has been provided.

The 'Summary of Claimed Subject Matter' section on pages 7-8 of the appeal brief improperly omits providing any reference numbers/characters corresponding to claimed subject matter.

The 'Grounds of Rejection to be Reviewed on Appeal' section on page 8 of the appeal brief improperly groups together the grounds of rejection under 35 USC 112 first paragraph and the grounds of rejection under 35 USC 112 second paragraph. These are two separate and distinct grounds of rejection, and they should not be combined together.

The 'Grounds of Rejection to be Reviewed on Appeal' section on page 8 of the appeal brief improperly omits identifying claims 9-15 and 18-22 as also being rejected under 35 USC 112, first and second paragraphs, due to their respective claim dependencies.

The 'Grounds of Rejection to be Reviewed on Appeal' section on page 8 of the appeal brief incorrectly identifies the grounds of rejection as "whether claims... are allowable under 35 USC 112, first and second paragraphs... under 35 USC 102(b)... and... under 35 USC 103(a)." The grounds of rejection are not "whether claims are allowable," the grounds of rejection are that the corresponding "claims are rejected" under 35 USC 112 first and second paragraphs, 35 USC 102(b), and 35 USC 103(a).

The 'Argument' section on page 8 of the appeal brief should capitalize "independent" in the second line of the section.

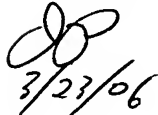
The 'Claims Appendix' section on pages 16-17 of the appeal brief provides an inaccurate copy of claim 16. The claim is missing the text, "[actuation of]" in line 5, and "[and]" in line 13. CFR § 1.121 states, "The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived." Accordingly, applicants' use of single-brackets in the Amendment submitted 7 June 2005 did not delete any subject matter. Following proper amendment practice, the aforementioned text remains in pending claim language, and must be provided in the 'Claims Appendix' section's copy of claim 16.


At least for such reasoning, the pending appeal brief is found non-compliant.

Note: The appeal brief has not been checked to the extent necessary to determine the presence of all possible non-compliance errors. If additional issues of non-compliance are discovered in a subsequent response, yet another Notification of Non-Compliant Appeal Brief will be necessitated. Applicants' cooperation is requested in correcting any other errors of which applicants may become aware in the claims.

The applicants are hereby notified that the examiner's art unit has recently changed from Art Unit 2673 to Art Unit 2629, please direct all future correspondence accordingly. Thank you.

J.P.  
23 March 2006.

  
3/23/06

  
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